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UNUC LEGAL & PROCOLOVE CONSULTANCY AND ENGINEERING :A STRATEGIC ALLIANCE OF LAW AND ENGENEERING

We are pleased to present this inaugural edition of our joint newsletter—a collaborative initiative by UNUC Legal LLP and Proclove Consultancy and Engineering Pvt. Ltd., marking a new chapter in integrated techno-legal solutions for infrastructure, construction, and arbitration sectors.

This strategic alliance brings together UNUC Legal LLP's decades of legal excellence, particularly in complex arbitration and dispute resolution, with Proclove's engineering and contract management expertise, honed through years of on-ground experience in handling major infrastructure and hydroelectric projects across India.

By combining legal precision with technical acumen, this partnership is uniquely positioned to provide end-to-end solutions—from contract formulation and risk analysis todispute resolution through conciliation, DABs, and arbitration proceedings. Whether advising on FIDIC-based contracts, handling high-value claims, or supporting public infrastructure litigations, the joint force of UNUC Legal and Proclove is committed to delivering strategic, cost-effective, and outcome-driven counsel to public and private sector stakeholders alike.

Through this newsletter, we aim to share insights, thought leadership, and updates from the intersection of law, engineering, and infrastructure policy—furthering our shared mission to redefine how disputes are managed in India's fast-evolving project and construction landscape.

MESSAGE BY PATRON IN CHIEFS

S.B. UPADHYAY

PAWAN UPADHYAY

At the heart of UNUC Legal LLP lies a legacy built on pioneering vision and relentless pursuit of excellence. Shri S.B. Upadhyay, Senior Advocate, whose commitment to institutional legal reform and jurisprudential development remains unparalleled, laid the foundation of UNUC Legal LLP with a single goal—to provide strategic, insightful, and client-first legal services in the most complex commercial and infrastructure disputes. This vision was inherited and expanded by Advocate Pawan Upadhyay, under whose leadership UNUC Legal LLP has scaled new heights.

The firm today commands the trust of some of India's leading conglomerates and PSUs, having steered infrastructure arbitration disputes cumulatively valued at over Rs. 2,500 crores. Beyond private litigation, both patrons-in-chief have played an instrumental role in shaping the Arbitration and Conciliation Act, 1996, laying the very framework on which the present Indian arbitration regime stands.

From the hallowed halls of the Supreme Court to various High Courts across the country, UNUC Legal LLP has led arguments in over 5,000 cases—spanning commercial, civil, and criminal domains—with several matters contributing directly to the evolution of modern Indian jurisprudence. It is in continuation of this tradition of thought leadership that we are proud to inaugurate the first edition of our arbitration-focused newsletter. This platform shall serve as both a repository of advanced legal analysis and a source of practical insight for in-house legal professionals navigating the complexities of commercial arbitration.

MESSAGE BY EDITORS IN CHEIF

It is with great pleasure that we present the second edition of our newsletter , a publication conceived with the aim of delivering high-quality, practice-relevant insights into the evolving landscape of arbitration law in India.

This issue brings together literature that addresses some of the most pressing and nuanced developments in arbitral practice, ranging from technical delay analysis in infrastructure disputes to the enforceability of emergency arbitrator orders, and from the jurisprudence surrounding unilateral appointments to the narrowing scope of "public policy" under Section 34.

Each piece is rooted in contemporary case law, statutory evolution, and procedural strategy, offering a solution-oriented perspective informed by real-world challenges. The intention behind this initiative is not merely to document developments, but to analyze them critically and constructively, with a view to equipping practitioners, counsel, and stakeholders with actionable takeaways.
As India continues to strengthen its arbitration ecosystem, we hope this newsletter contributes meaningfully to that momentum. We welcome your feedback and suggestions as we look forward to curating future editions that remain current, relevant, and thought-provoking.

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UNDERSTANDING GST ON ARBITRATIOON AWARDS

Understanding GST on Arbitration Awards

When the Goods and Services Tax (GST) regime was introduced in July 2017, it marked one of the most significant tax reforms in India. While it brought clarity and uniformity to many areas of taxation, it also raised several complex transitional questions—especially regarding contracts executed before GST came into force, but where payments were delayed, disputed, or later settled through arbitration.

One of the most debated issues has been whether GST applies to amounts awarded through arbitration when the underlying contract was signed and completed prior to 1st July 2017. As simple as the question sounds, the answer depends on understanding when the actual supply occurred and how GST law treats such scenarios.

Pre-GST Contracts and Delayed Payments

The core principle under GST law is that tax is levied based on the time of supply, not necessarily when the payment is received. Section 14 of the CGST Act specifically addresses transactions that straddle the GST implementation date. If the supply of goods or services was completed before 1st July 2017, and the only thing pending was payment, GST does not apply.

Time of Supply: What the Law Says

Sections 12 and 13 of the CGST Act deal with how to determine the time of supply for goods and services. In both cases, the law examines when the service was rendered or when the goods were delivered, not when payment was made or an arbitration award was passed.

This is critical in arbitration-related disputes. If the award merely orders payment for work already completed before July 2017, then the old tax regime applies, and GST has no bearing.

The Position on Damages and Penalties

Many arbitral awards also include liquidated damages or penalties for breach of contract. In Circular No. 178/10/2022, the Central Board of Indirect Taxes and Customs (CBIC) clarified that such damages or compensation for breach are not considered a taxable "supply" under GST.

An exception exists where one party pays for a contractual obligation to "tolerate" an act—like accepting a delay in return for compensation. But generally, damages for loss or default are not taxable under GST. Most arbitration awards fall into this category.

Why This Matters in Arbitration Today

For lawyers, arbitrators, contractors, and clients, this issue is more than academic. Arbitration has become a common method of resolving commercial disputes, especially in infrastructure, construction, and government contracts. Understanding whether GST applies can impact everything—from how claims are drafted, to how awards are enforced and taxed.

Key Judgments

Telangana AAR | Continental Engineering Corporation | 2021

Held: GST is applicable on amounts received through an arbitral award, even if the original contract work was done before 1 July 2017. Since the payment was received after GST came into effect, it qualifies as a taxable supply under the CGST Act.

Achampet Solo Pvt. Ltd. v. Union of India | Telangana High Court

Held: GST cannot be levied on arbitral awards related to contracts executed before GST came into force. The award does not create a new supply; it only settles past disputes. Tax liability is determined by the date of the original transaction, not the date of the award.

Conclusion

Arbitral awards must be assessed based on:

- The timeline of the underlying contract,
- The nature of the supply involved, and
- The type of compensation awarded.

Courts have consistently held that GST does not apply retrospectively. The law protects parties from being taxed unfairly on past contracts—especially when the only post-GST event is the settlement or payment of a pre-GST dispute.

A thoughtful approach to contract management, claim drafting, and award interpretation can ensure both tax compliance and avoidance of unnecessary litigation.

EXTENSION OF TIME IN CONSTRUCTION CONTRACTS

Extension of Time in Construction Contracts

In construction, completing a project on time is a contractual obligation. Most construction contracts revolve around fixed timelines, agreed milestones, and scheduled deliverables. Both the employer and contractor rely on these timeframes. However, construction work is often disrupted by real-world challenges such as unforeseen events, changes in design, adverse weather, or delays in approvals.

To address such disruptions, contracts typically include a provision for Extension of Time (EOT). This allows the completion date to be extended without penalizing the contractor when the delays are beyond their control. It reflects the practical difficulties of executing large-scale construction projects and ensures fairness between the parties.

Delays can arise due to various reasons. A site may not be handed over in time or may be encumbered, making it impossible to commence work as planned. The employer may issue changes in design or expand the scope of work, necessitating additional time. Unforeseen weather events can halt work, especially when safety is compromised. Sometimes, drawings, instructions, or approvals are delayed, leaving the contractor unable to proceed. Legal or regulatory changes may also affect the original construction schedule. Occasionally, unexpected site conditions require additional work or adjustments.
However, contractors are not entitled to an extension if the delay results from their own inefficiency, poor planning, or lack of resources. The basis for an EOT claim is that the delay must be genuinely outside the contractor's control.

To make a valid claim for EOT, prompt notification is critical. Most contracts require that any event likely to cause delay be reported within a defined period—typically seven to fourteen days. If such notice is not given in time, the claim may be rejected, even if the cause of delay is genuine.
In addition to timely notice, accurate recordkeeping is crucial. Contractors should maintain daily logs, weather records, progress reports, correspondence, and photographic documentation. These records help explain the delay and support the claim.

Contractors must also demonstrate how the delay impacted the project's critical path. This involves using recognized delay analysis techniques. The Critical Path Method identifies the sequence of activities that determine the project completion date. If any of these critical activities are delayed, the overall timeline is affected. Time Impact Analysis is another common method, which updates the project schedule and assesses the effect of delays as they occur. These analyses are typically carried out using software like Primavera or Microsoft Project.

Once submitted, the EOT claim is assessed by the contract administrator—usually an engineer or employer's representative. They evaluate the cause and duration of the delay, review the contractor's evidence, and determine whether the delay is excusable. If properly documented and justified, the claim is approved. In some instances, if the delay has led to additional costs, the contractor may also be entitled to financial compensation.
When an EOT is granted, the completion date is formally revised, protecting the contractor from penalties like liquidated damages. If the EOT is denied and the work is delayed, the employer may impose penalties as specified in the contract.

Even when a delay is not the contractor's fault, failure to follow proper claim procedures can result in liability. On the other hand, if the employer wrongly denies or delays an extension, they may be exposed to legal challenges, including breach of contract or constructive acceleration.
A common practice among government departments and public sector bodies is to grant provisional extensions while reserving the right to impose liquidated damages later. However, such actions have been deemed unlawful by the Supreme Court and are not supported by contract law.

When approving EOTs, employers are expected to carry out proper delay analysis and clearly identify delays caused by themselves, by the contractor, or concurrent delays. Transparent and fair assessments help avoid unnecessary disputes and maintain the contractual balance.
Disputes over EOT claims are common. When disagreements arise, the contract's dispute resolution mechanism—such as mediation, arbitration, or litigation—is usually triggered.

By following the principles of timely notice, proper documentation, and objective analysis, both employers and contractors can manage delays constructively, preserve their working relationship, and resolve disputes fairly.

LIVING WILL IN INDIA: INNOVATIVE YET PRAGMATIC

A Living Will, or Advance Medical Directive, is a legal document that enables a person to state in advance the kind of medical treatment they wish to receive—or refuse—if they become terminally ill or incapable of communication. It empowers individuals to say no to artificial life support, like ventilators, when there is no hope of recovery and death is imminent.

In India, the concept gained legal recognition through the landmark Supreme Court judgment in Common Cause v. Union of India, (2018) 5 SCC 1, which held that the Right to Die with Dignity is part of the fundamental Right to Life under Article 21 of the Constitution.

The Court laid down strict guidelines for the creation and execution of a Living Will. It must be:

- Made voluntarily by an adult of sound mind
- In writing and signed by the person and two witnesses
- Countersigned by a Judicial Magistrate of First Class (JMFC)
- Stored with the individual, their hospital, and family physician
-

When the person is in an irreversible medical condition, the Will can be activated. The hospital informs a medical board. If the board agrees, the matter is referred to the District Collector, who forms a second board. Only after both panels approve, and with the Collector's permission, can life support be withdrawn.

The Roadblocks to Practical Use

Despite its noble intent, the current Living Will process is too complex for real-life emergencies. Multiple approvals, medical boards, and judicial formalities make it difficult to act quickly when time is critical.

Public awareness is also lacking. Although the Supreme Court recognized Living Wills in 2018, India's first dedicated clinic came up only recently in Mumbai. Most people, especially the elderly, remain unaware of the concept or the steps involved.

The system is also vulnerable to misuse. Hospitals may exploit families during emotional moments to push premature decisions. Insurance companies might delay claims or hike premiums, citing pending approvals related to Living Wills.

The Way Forward: Practical Legal Solutions

Living Wills are empowering, but to be effective, the framework needs reform.

Simplify the Process by replacing the current multi-tiered system with a single certified panel from national hospitals like AIIMS.

Create a Digital Registry to store and verify Living Wills securely, reducing fraud and delays.

Increase Public Awareness through campaigns, senior citizen outreach, and support at local clinics and hospitals—especially in rural areas.

Legally Safeguard Families and Patients by defining clear roles for relatives during execution and setting rules for insurance companies to prevent misuse or delays

Conclusion

A Living Will allows people to take control of their end-of-life care with dignity. With legal recognition already in place, focused reforms and better awareness can make this tool truly accessible, ethical, and impactful for Indian society.

Part Payment, Part Protection: SC's Clear Stand on Limitation Extension

In a recent and significant ruling, the Supreme Court has once again clarified the scope of Section 18 of the Limitation Act, 1963. The Court held that when a debtor acknowledges only a part of the outstanding debt in writing, the limitation period is extended only for that admitted portion, and not for the entire amount claimed.
The judgment was delivered by a bench comprising Justices Sanjay Kumar and S.C. Sharma, in affirmation of the Chhattisgarh High Court's decision.

Case at a Glance

In the present matter, the plaintiff sought to recover a sum of ₹3,07,115.85 along with interest at the rate of 18% per annum. The defendant, however, admitted to owing only ₹27,874.10. While the trial court dismissed the suit on the grounds of limitation, the High Court allowed recovery only to the extent of the acknowledged sum, refusing to extend the benefit of limitation to the remaining claim. The Supreme Court upheld this reasoning, reiterating that Section 18 applies strictly to the acknowledged liability and not beyond it.

Understanding Section 18

Section 18 allows for a fresh limitation period to commence if a written acknowledgment of debt is made by the debtor before the original period of limitation expires. Such acknowledgment must be clear, signed by the debtor (or an authorized agent), and made within the prescribed time. Importantly, it does not revive the claim entirely ,it merely restarts the limitation period from the date of acknowledgment, and only for the admitted portion.

Partial Acknowledgment Means Partial Extension

Applying this principle, the Court in Airen & Associates held that since the debtor acknowledged only ₹27,874.10, limitation could be extended only for that amount. The remaining sum, having never been acknowledged in writing, continued to be barred by time. The Court also referred to its earlier judgment in J.C. Budhraja v. Orissa Mining Corporation Ltd. (2008) 2 SCC 444, which adopted the same view ,that only admitted debts benefit from an extension under Section 18.

Distinction from Section 19

While Section 18 relates to written acknowledgments, Section 19 covers part-payments made within the limitation period. Such payments also reset the limitation clock ,but again, the extension is limited only to the portion paid or explicitly acknowledged in connection with the debt.

Conclusion

The ruling in Airen & Associates underscores a critical nuance in limitation law: acknowledgment must be clear, written, and specific. A general or partial acknowledgment cannot revive the whole claim. For both creditors and debtors, this decision serves as a timely reminder that legal precision and proactive communication remain key in preserving or defending claims within the bounds of limitation.

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